

Radiation Exposure Compensation Act Trust Fund

FY 2014 President's Budget

**Civil Division
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OVERVIEW

On October 5, 1990, Congress passed the Radiation Exposure Compensation Act (“the Act” or “RECA”). The Act offers an apology and monetary compensation to individuals who contracted certain cancers and other serious diseases as a result of their exposure to radiation released during above-ground atmospheric nuclear weapons tests or as a result of their occupational exposure while employed in the uranium industry during the build-up to the Cold War. This unique program was designed as an alternative to litigation in that the statutory criteria do not require claimants to establish causality. Specifically, if the claimant can satisfy the requirements outlined in the statute, which include demonstrating that he or she contracted a compensable disease after working or residing in a designated location for a specified period of time, he or she qualifies for compensation.



Congress charged the Attorney General with responsibility for adjudicating claims under the Act. The Department of Justice established the Radiation Exposure Compensation Program (“the Program”) within the Civil Division. The Program commenced operations in April 1992. Since its inception, 39,011 claims have been filed and over \$1.78 billion has been awarded in connection with 26,870 approved claims (as of March 1, 2013).

The Division estimates that approximately \$82,000,000 will be needed from the RECA Trust Fund in FY 2014.

PROGRAM DESCRIPTION

Mission Statement: Fairly and expeditiously adjudicate claims, fully consistent with the Radiation Exposure Compensation Act, as amended; educate the public about the Act; and develop strategies for improving the Program.

Background

From 1945 through 1962, the United States conducted nearly 200 atmospheric nuclear weapons tests while building the arsenal that became the cornerstone of the Nation's Cold War security strategy. At the same time, other world powers also engaged in testing nuclear weapons. The mining and processing of uranium ore that was conducted by thousands of workers was essential to the development of nuclear weapons. Many workers filed class action lawsuits that appellate courts eventually dismissed. Congress then devised a program to make partial restitution to the individuals who developed serious illnesses after their exposure to radiation released during above-ground atmospheric nuclear tests or following their employment in the uranium industry. Congress passed the Act on October 5, 1990, and later broadened the scope of its coverage on July 10, 2000.

The Act established monetary compensation for individuals who contracted specified diseases in three defined populations:

- Uranium workers – uranium miners, millers, and ore transporters receive \$100,000;
- On-site participants – individuals present at atmospheric nuclear test locations receive \$75,000; and
- Downwinders – individuals who lived downwind of the Nevada Test Site receive \$50,000.

Department of Justice-issued regulations were designed to utilize existing records so that claims could be resolved in a reliable, objective, and non-adversarial manner, with little administrative cost to the United States or to the person filing the claim.

Today, the Program is at the center of a broad inter-agency network that comprises the comprehensive federal radiation compensation system, working with the Departments of Health and Human Services (HHS), Labor, Energy, Veterans Affairs, and Defense to administer the Act.

Funding History

The RECA Trust Fund was funded out of discretionary appropriations from FY 1992 to FY 2001. Following enactment of the 2000 Amendments and a subsequent influx of new claims, the appropriation became insufficient to meet the increase in the number of claims deemed eligible for compensation. In 2002, Congress addressed the problem within the Department of Defense Authorization Act for FY 2002, which established annual funding against mandatory spending caps. By 2003, however, the increased rate of new claim filings and approvals proved the caps to be inadequate, and a funding shortfall ensued. Working in close coordination, the appropriators and authorizers devised effective legislative solutions to the funding problems. The following statutes ensure that all eligible RECA claims will be paid in a timely manner throughout the life of the Program:

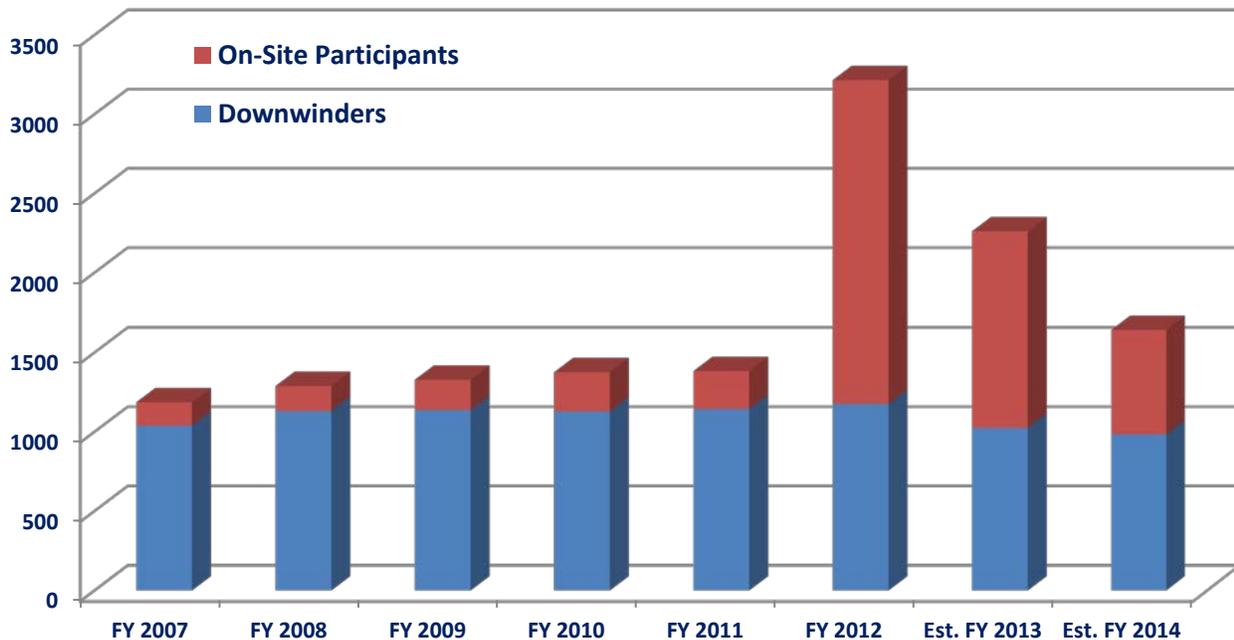
- The Consolidated Appropriations Act for 2005 contained language that made funding for the RECA Trust Fund mandatory and indefinite beginning in FY 2006. Henceforth, the Fund has exclusively paid Section 4 claimants (on-site participants and downwinders).
- The National Defense Authorization Act for FY 2005 contained language requiring the Energy Employees Occupational Illness Compensation Fund to pay Section 5 claimants (uranium workers – uranium miners, millers, and ore transporters).

Claim Statistics and Trends

Over the life of the Program, over 39,000 claims have been filed. This has resulted in 37,072 adjudications, which include 10,202 denials and 26,870 approvals, and reflects a 70 percent approval rate. Of the denials, only 13 claimants have sought review in federal district court. Total awards over the life of the Program exceed \$1.78 billion (as of March 1, 2013).

The chart on the following page illustrates claims activity over the last six years.

FY 2007 – FY 2014 Section 4 Claims Filed



A significant development occurred in November 2011, when the AARP published two articles related to atomic veterans and exposure to radiation. The articles state that compensation is available for individuals who participated on-site in an above-ground nuclear weapons test conducted by the United States between 1945 and 1962, as well as for those who were part of the occupation forces at Hiroshima and Nagasaki during the same time period. While the Act covers individuals involved in on-site testing that occurred at the Nevada, Pacific, South Atlantic and Trinity Test Sites, Congress has not extended coverage under the Act to those individuals who served in Japan.

As a result, the Program received thousands of telephone calls for information and over 6,000 requests for on-site participant claim forms. The media exposure led to an onslaught of claim filings that eventually slowed down towards the end of FY 2012. The Program witnessed an especially large spike in claims in the second quarter of FY 2012 and another surge at the end of the third quarter due to a follow-up posting in the June 2012 AARP Bulletin. In FY 2012, the Program received over 3,215 new Section 4 claims, of which 2,040 were from on-site participant claimants. By comparison, in all of FY 2011, the Program received 1,383 Section 4 claims. The last time the Program saw such a dramatic increase in new claims was in FY 2001 after enactment of the RECA Amendments of 2000.

The increase in receipts has resulted in a growing number of pending claims. Presently, 1,949 Section 4 claims are pending, which will impact award amounts paid out in FY 2013 and FY 2014. The Program's work in reviewing these claims, identifying evidentiary deficiencies, and contacting claimants and partner agencies for additional information has increased dramatically. Currently, the Program is intently focused on adjudicating claims within the one-year time period and continues to monitor and forecast approval rates and award increases. As claim filings decline gradually, no significant reduction to previous levels is expected by FY 2014.

To quickly pay the eligible claims that were filed, the Program requested additional funding of \$15,000,000 in March 2012. The Program anticipates that award payments will remain high in FY 2013, as it still has a substantial pending workload to adjudicate.

Looking forward to the next ten years, the Program may see an increase in the number of downwinder and on-site participant claims filed. Several of the cancers covered under RECA, such as primary cancers of the lung, colon and breast, have a rising incidence rate in populations 50 years of age and older (See U.S. Cancer Statistics Working Group, *United States Cancer Statistics: 1999–2007 Incidence and Mortality Web-based Report*, 2010, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention and National Cancer Institute, available at: www.cdc.gov/uscs). The youngest individuals exposed to radiation from fallout of atmospheric nuclear weapons testing turned 50 years old in 2012. Moreover, individuals exposed to ionizing radiation at younger ages have shown a greater risk of contracting these cancers. As cancers express themselves in the affected population, increases in both claimant categories are reasonable assumptions.

Proposed Legislation

In the past couple of years, several proposals to expand eligibility and increase award amounts have been introduced in the House and Senate. They did not leave the various committees for debate on the floor and died when the 112th session of Congress ended. However, similar bills may be reintroduced in the coming months. Already, one RECA-related bill has been introduced in the 113th session of Congress.

- On April 12, 2011, the "RECA Amendments of 2011" (S.791) was reintroduced in the Senate. This bill would greatly increase the claimant size and amounts awarded by the Program. Specifically, the bill includes measures to expand the currently rural downwind affected areas to include the entire states of Arizona, Utah, and Nevada, as well as add New Mexico, Colorado, Idaho, and Montana. It also seeks to equalize compensation for all claimants at an amount of \$150,000. These payments would be retroactive for claimants who have already been approved. New claimant classes would be added and affidavits would be permitted in lieu of documentary evidence to establish the Act's exposure requirements. Additionally, medical benefits would be available to RECA downwinder and on-site participant claimants. Lastly, the bill includes

authorization for HHS to establish a grant program on the epidemiological impacts of uranium mining and milling. A companion bill (H.R.1490) was introduced in the House.

- On November 28, 2012, legislation to expand claimant eligibility was filed as an amendment to the National Defense Authorization Act for FY 2013 (S.3254) but was not included in the final bill. The amendment would extend eligibility to include uranium miners and millers who worked in the industry from 1971 to 1990, in addition to those working from 1942 to 1971. It would also allow individuals who worked or resided downwind of the Trinity Test Site for a one-month period to qualify for downwind compensation. The Congressional Budget Office estimated that the proposed expansion would cost approximately \$1 billion over 10 years.
- On January 25, 2013, Congressman Paul Gosar (AZ) introduced the “Mohave County Radiation Compensation Act of 2013” (H.R.424) as the first RECA bill in the 113th session of Congress. Versions of this bill have been introduced in previous sessions of Congress, but they have never reached the House floor. Similar to its predecessors, the legislation seeks to include the county of Mohave in the state of Arizona as an affected downwinder area. The bill is currently pending in the House Subcommittee on the Constitution and Civil Justice.

Current workload and funding projections do not account for the possible impact of any substantive statutory changes.

PERFORMANCE, RESOURCES, AND STRATEGIES

The Program office is located in Washington, D.C. and is administered by a staff of four attorneys, eight claims examiners, and six contractor employees within the Constitutional and Specialized Torts Section of the Civil Division’s Torts Branch. The support staff reviews claim packages, assists claimants with their applications, and manages physical case files. RECA Program attorneys strive to fairly and efficiently process and resolve claims. To date, the Program has far surpassed its goals for the timely processing and adjudication of claims.

Performance Plan and Report for Outcomes

The Program supports Goal 2 of the Department of Justice’s Strategic Plan, specifically Objective 2.6: “Protect the federal fisc and defend the interests of the United States.”

The Program’s primary objective is to implement civil justice reform initiatives to resolve categories of claims for which traditional litigation has proven ineffective and to administer compensation programs enacted by Congress that offer non-litigation solutions for radiation exposure claimants.

Strategies to Accomplish Outcomes

The Program will employ the following strategies to accomplish this mission:

- Utilize skilled claims examiners to conduct the initial review of claims, freeing the Program attorneys to conclude the adjudication and render the final determination.
- Access external data sources, such as the Social Security Administration, the National Institute for Occupational Safety and Health, the Public Health Service, and state cancer and tumor registries to assist claimants in securing the necessary documentation to support their claims.
- Coordinate with the Department of Labor’s Energy Employees Occupational Illness Compensation Program to ensure that eligible Section 5 RECA claimants receive compensation in a timely manner. This includes the review of claimant files to decide eligibility pursuant to the Energy Employees Occupational Illness Compensation Program Act.
- Brief Members of Congress and their staffs as requested; provide information to Members of Congress and the public in an open, timely, and complete manner.
- Coordinate with HHS’ Radiation Exposure Screening and Education Program to assist grantees in providing relevant information to individuals screened for disease in the affected geographic regions.
- Conduct outreach by traveling to areas with populations of potential claimants and participating in roundtable discussions held by congressional delegations for their constituents.
- Use a toll-free telephone line and website to communicate with claimants and publish regularly updated statistical information on www.data.gov.

Radiation Exposure Compensation Act Workload							
Claims Filed and Approved							
(Dollars in Thousands)							
	FY 2008 Actual	FY 2009 Actual	FY 2010 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Estimate	FY 2014 Estimate
Section 4 Claims – Downwinders and On-Site Participants							
Downwinders							
Pending, Beginning of Year	424	366	297	213	224	437	373
Claims Filed	1,131	1,137	1,127	1,143	1,175	1,025	983
Claims Approved	985	1,053	1,035	1,018	832	926	913
Total Value of Approvals	\$49,250	\$52,650	\$51,750	\$50,900	\$41,600	\$46,300	\$45,650
On-Site Participants							
Pending, Beginning of Year	91	70	52	79	63	1,290	1,184
Claims Filed	158	191	248	240	2,040	1,236	660
Claims Approved	91	115	132	143	589	671	649
Total Value of Approvals	\$6,438	\$8,437	\$9,581	\$10,397	\$43,351	\$48,312	\$46,728
Subtotal Section 4 Claims							
Pending, Beginning of Year	515	436	349	292	287	1,727	1,557
Claims Filed	1,289	1,328	1,375	1,383	3,215	2,261	1,643
Claims Approved	1,076	1,168	1,167	1,161	1,421	1,597	1,562
Total Value of Approvals	\$55,688	\$61,087	\$61,331	\$61,297	\$84,951	\$94,612	\$92,378
Section 5 Claims – Uranium Miners, Millers, and Ore Transporters							
Pending, Beginning of Year	294	205	216	172	152	146	151
Claims Filed	700	575	453	408	395	420	424
Claims Approved	486	332	296	302	271	287	291
Total Value of Approvals	\$48,600	\$33,200	\$29,600	\$30,200	\$27,100	\$28,700	\$29,100

Radiation Exposure Compensation Act Workload Claims Filed and Approved (Dollars in Thousands)							
	FY 2008 Actual	FY 2009 Actual	FY 2010 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Estimate	FY 2014 Estimate
TOTAL (Section 4 Claims and Section 5 Claims)							
Pending, Beginning of Year	809	641	565	464	439	1,873	1,708
Claims Filed	1,989	1,903	1,828	1,791	3,610	2,681	2,067
Claims Approved	1,562	1,500	1,463	1,463	1,692	1,884	1,853
Claims Denied	597	482	467	353	484	576	473
Total Adjudications (Approved + Denied)	2,159	1,982	1,930	1,816	2,176	2,460	2,326
Approval Rate	72%	76%	76%	81%	78%	77%	80%
Total Value of Approvals	\$104,288	\$94,287	\$90,931	\$91,497	\$112,051	\$123,312	\$121,478

B: Summary of Requirements

Summary of Requirements
 Radiation Exposure Compensation
 Payments to the Radiation Compensation Trust Fund
 (Dollars in Thousands)

	FY 2014 Request		
	Perm. Pos.	FTE	Amount
2012 Enacted	0	0	\$75,000
Total 2012 Enacted	0	0	75,000
2013 President's Budget (with Recessions)			94,000
Adjustments to Base			
Decreases:	0	0	(12,000)
Other Adjustment			
Total Adjustments to Base	0	0	(12,000)
2014 Current Services	0	0	82,000
2014 Total Request			82,000
2013 - 2014 Total Change	0	0	(12,000)

B: Summary of Requirements

Summary of Requirements
 Radiation Exposure Compensation
 Payments to the Radiation Compensation Trust Fund
 (Dollars in Thousands)

Estimates by budget activity	2012 Appropriation Enacted			2013 President's Budget			2014 Adjustments to Base and Technical Adjustments			2014 Current Services			2014 Increases			2014 Offsets			2014 Request		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Radiation Exposure Compensation Trust Fund	0	0	\$75,000			\$94,000	0	0	-\$12,000	0	0	\$82,000	0	0	\$0	0	0	\$0	0	0	\$82,000

D: Resources by DOJ Strategic Goal and Objective

Resources by Department of Justice Strategic Goal and Objective

Radiation Exposure Compensation
 Payments to the Radiation Compensation Trust Fund
 (Dollars in Thousands)

Strategic Goal and Objective	FY 2012 Appropriation Enacted		FY 2013 Continuing Resolution		FY 2014 Current Services		FY 2014 Request	
	FTE	Amount \$000s	FTE	Amount \$000s	FTE	Amount \$000s	FTE	Amount \$000s
Goal 2: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law								
2.6: Protect the federal fisc and defend the interests of the United States	0	\$75,000	0	\$94,000	0	\$82,000	0	\$82,000
Subtotal, Goal 2	0	\$75,000	0	\$94,000	0	\$82,000	0	\$82,000
GRAND TOTAL	0	\$75,000	0	\$94,000	0	\$82,000	0	\$82,000

E. Justification for Base Adjustments

**Justification for Base Adjustments
Radiation Exposure Compensation
Payments to The Radiation Compensation Trust Fund
(Dollars in thousands)**

<u>Increases</u>	<u>POS</u>	<u>FTE</u>	<u>Amount</u>
<u>RECA Program Adjustments</u> . Based on out-year statistical projects for downwinders and on-site participants, the Division requests an adjustment to base of -\$12,000,000 for FY 2014.	0	0	-\$12,000
Total Decrease:	0	0	-\$12,000
Total ATB:	0	0	-\$12,000

F: Crosswalk of 2012 Availability

Crosswalk of 2012 Availability
 Radiation Exposure Compensation
 Payments to the Radiation Compensation Trust Fund
 (Dollars in Thousands)

Decision Unit	FY 2012 Enacted /1			Reprogrammings/ Transfers			Carryover Amount /2			Recoveries Amount /3			FY 2012 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Radiation Exposure Compensation Trust Fund	0	0	\$75,000	0	0	\$0	0	0	\$12,018	\$0	\$0	\$200	0	0	\$87,218

- 1/ In FY 2012, RECA received an additional \$15,000,000 for program funds.
- 2/ The carryover amount of \$12,018,000 is used for payments awarded in FY 2012.
- 3/ The recovery of \$200,000 is used for payments awarded in FY 2012.

G: Crosswalk of 2013 Availability

Crosswalk of 2013 Availability
 Radiation Exposure Compensation
 Payments to the Radiation Compensation Trust Fund
 (Dollars in Thousands)

Decision Unit	FY 2013 Continuing Resolution			Reprogrammings/ Transfers			Carryover Amount			Recoveries Amount			FY 2013 Availability		
	Pos	FTE	Amount	Pos	FTE	Amount	Pos	FTE	Amount	Pos	FTE	Amount	Pos	FTE	Amount
Radiation Exposure Compensation Trust Fund	0	0	\$94,000	0	0	\$0			\$6,362			\$198	0	0	\$100,560

L: Summary of Requirements by Object Class

Summary of Requirements by Object Class
 Radiation Exposure Compensation
 Payments to the Radiation Compensation Trust Fund
 (Dollars in Thousands)

Object Classes	2012 Actual		FY 2013 Availability		2014 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
41.0 Grants, Subsidies and Contributions	0	\$87,218	0	\$100,560	0	\$82,000	0	(\$12,000)
Total obligations	0	87,218	0	100,560	0	82,000	0	(12,000)
Unobligated balance, start of year		(12,018)		(6,362)		0		
Unobligated balance, end of year		0		0		0		
Recoveries of prior year obligations		(200)		(198)		0		
Total Requirements		\$75,000		\$94,000		\$82,000		